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## On the Road to Brexit

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## **On the road to Brexit**

David Phinnemore, Professor of European Politics, Queen's University Belfast

The United Kingdom (UK) has never been at ease with either its membership of the European Union (EU) or the broader idea of European integration. The EU referendum on 23 June 2016 was supposed to settle the issue. It is unclear when and how it will.

For the then Prime Minister, David Cameron, the plan was for the referendum to bring closure on the question of whether the UK should remain in or leave the EU. The people would decide, and in being allowed to do so, Cameron would at least be able to silence the demand for a referendum from his vociferous backbench eurosceptic MPs.

Cameron expected a 'remain' outcome. Faced with the choice, voters would reject the uncertainties of a 'leave' vote and opt for the knowns of the status quo. How wrong Cameron was; how wrong too in its expectations was much of the political establishment.

On a turnout of 72.2%, 51.9% of voters across the UK opted to 'leave' the EU. The margin of victory was far from emphatic; it also marked significant regional differences. While England (53.4%) and Wales (52.5%) voted 'leave', larger majorities in Scotland (62.0%) and Northern Ireland (55.8%) voted 'remain'. There was also the result in Gibraltar: 95.9% for 'remain'.

Voters not only delivered the 'wrong' result for Cameron who promptly resigned, but promised further years of wrangling over how best the UK should – and could – leave and yet continue to engage with the EU. While 'leave' supporters were jubilant and the most ardent Eurosceptics were calling for immediate steps towards 'Brexit' and withdrawal from the EU, it was equally clear that a good number of the 48.1% of remainers were unwilling to see the UK rush headlong through the EU's exit door. There was also the matter of what would happen with Scotland and Northern Ireland.

In the wider EU, eurosceptic parties and their leaders certainly rejoiced. Marine le Pen of the Front National in France declared 'Victory for Freedom', adding 'Now it's France's turn' and following up with calls for 'Frexit'. Geert Wilders in the Netherlands tweeted his congratulations to the leavers and called for the Netherlands to hold a vote on continued membership of the EU.

For most of the political elite in the EU, the referendum result was met with a mix of shock and sadness. EU leaders expressed their 'deep regret' at the outcome, as did the Presidents of the European Commission, Jean-Claude Juncker, and the European Council, Donald Tusk. There was also a sense of bewilderment and disbelief.

The fact of the matter was that the majority of those voting in the referendum had indicated that they wanted to leave the EU. Although Cameron resisted calls to trigger immediately the formal process for withdrawal, it was soon clear that the UK government would not be treating the referendum as merely advisory; it would be following through on the result.

As soon as she took over from Cameron as Prime Minister, Theresa May made this clear: 'As we leave the European Union, we will forge a bold new positive role for ourselves in the world, and we will make Britain a country that works not for a privileged few, but for every one of us. That will be the mission of the government I lead, and together we will build a better Britain'. May also coined the phrase: 'Brexit means Brexit'.

While expressing their regret at the prospect of a UK withdrawal EU leaders immediately accepted the outcome. They were quick to point out, however, that 'Brexit' was but one of the issues on their agenda. Moreover, they could quickly adapt to the prospect. Within a matter of days, on 29 June, the EU-27 leaders met informally without David Cameron. They confirmed their determination 'to remain united and work in the framework of the EU to deal with the challenges of the 21st century and find solutions in the interest of our nations and peoples'. They added: 'We stand ready to tackle any difficulty that may arise from the current situation'.

A UK withdrawal from the EU was certainly not desired. Yet, a referendum had been held, the outcome according to the UK government was clear, and so the UK had set itself on a path to leaving. The EU-27 would not be allowing the decision and its outworkings to distract it unnecessarily from issues, priorities and challenges on its agenda.

The EU nevertheless has to deal with the reality of the referendum result and the determination of the May government to treat the result as decisive. With May promptly establishing a Department for Exiting the European Union (DExEU) and appointing the leading eurosceptic David Davis as its Minister, the message from Downing Street was clear. The UK will be leaving the EU.

In response, the EU-27 and the EU institutions have been equally clear. Negotiations on the UK's withdrawals from the EU can only take place once the UK government has formally notified its intention to leave the EU in accordance with Article 50 of the Treaty on European Union. To date it has not done so. May has though indicated that Article 50 will be triggered before the end of March 2017.

So far the EU-27 line of 'no negotiation without notification' has held. Indeed, the line has been toughened; essentially it is a case of 'no discussion without notification'. At her first European Council in October 2016, May was invited to brief fellow EU leaders for five minutes after a late dinner at 1am; no EU leader responded.

The EU-27 have not held back, however, in signalling that withdrawal will not necessarily be a straightforward affair. There are a range of issues to address such as the rights of EU citizens in the UK and of UK citizens abroad, the relocation of EU agencies currently based in the UK, the allocation of unspent EU funds due to be received by UK regions and farmers, the UK's share of EU assets, the future of UK nationals working for the EU institutions, and the UK's liabilities relating to EU employees' pensions.

There is then the matter of what post-Brexit relationship will the UK be able to conclude with the EU. Importantly, the UK cannot expect to abandon membership and simply walk straight into whatever new relationship it wishes to have with the EU. The EU-27 are clear: the UK will not be able to 'pick and choose' what it wants from that new relationship. The EU-27 line, expressed with remarkable regularity and consistency is that the four freedoms of single market come as a package and cannot be unpicked. If the UK wishes to have access to the single market it has to accept the free movement of people alongside the free movement of goods, services and capital. There is no 'cherry-picking'.

Reporting on the informal meeting of EU-27 leaders on 29 June 2016, Tusk was emphatic: 'Leaders made it clear that access to the single market requires acceptance of all four freedoms, including the freedom of movement. There will be no single market 'à la carte'.

The previous day, the German Chancellor, Angela Merkel had made it clear that 'negotiations will not be run on the principle of cherry-picking ... Whoever wants to get out of [the EU] family cannot expect that all the obligations fall away but the privileges continue to remain in place'.

Four months later and there has been no movement in the position of the EU-27. In fact, it appears to have hardened, particularly in the light of the brusque and combative language that characterised the speeches of May and other senior government ministers at the Conservative Party conference in early October.

The Prime Minister of Malta, Joseph Muscat – Malta will hold the rotating Council Presidency in the first half of 2017 when May has indicated Article 50 will be triggered – responded that the ‘the four freedoms cannot be decoupled’ adding that any deal, while having to be ‘a fair deal’ would have to be ‘an inferior deal’. Moreover, referring to the eurozone crisis: ‘expect the format [of negotiations] to be more or less like what happened with Greece’. The message from Muscat and others is clear: the negotiations on a new relationship will be tough; the EU will be no push over.

Added to all this, the EU-27 have been equally clear that formal negotiations on a new relationship cannot and will not begin until after the UK has withdrawn. With May signalling that Article 50 will be triggered before the end of March 2017, withdrawal negotiations will probably be launched in the late spring. This assumes May’s timetable is not unsettled by legal challenges in the High Court in London and in Belfast. If these are successful, the Westminster Parliament at least will have to authorise the notification of the UK’s intention to withdraw.

Once the negotiations start, it will be the UK versus the EU-27 with the Council and the Commission representing the latter. The exact nature and substance of the negotiations is yet to be clarified, although lead negotiators for the EU-27 have been appointed. The Commission team will be led by Michel Barnier, a former French Commissioner; the Council task force preparing for the negotiations is being led by Didier Seeuws, former chef de cabinet of Tusk’s predecessor as European Council President, Herman Van Rompuy.

The negotiators will have two years to agree the terms of withdrawal and have them ratified by the European Parliament (EP). The UK will then leave the EU. If no withdrawal agreement is reached, the UK will simply leave the EU after the two years have elapsed. The two years can be extended, but this requires the unanimous agreement of the EU-27. Each member state has a veto.

Importantly, no member state has a veto over the terms of withdrawal. They are decided by the Council acting by a qualified majority. In practice this means that only 21 of the EU-27 member states need agree to the terms. Equally importantly, their deliberations take place without the UK present.

Whether and to what extent the EP will be involved in these deliberations remains to be seen. The EP has appointed a negotiator – the Belgian federalist Guy Verhofstadt – and it will need to approve the terms of withdrawal.

How the terms will be approved in the UK is still to be formally clarified. In an attempt to neutralize demands from MPs that the House of Commons must be given a vote on the triggering of Article 50 – a focus of legal challenges – May conceded that MPs would have a vote on the terms of withdrawal. She was quick to add, however, that MPs would not be allowed to block the UK's withdrawal. What role the devolved legislatures in Belfast, Cardiff and Edinburgh might have has yet to be declared.

Indeed, what role the Northern Ireland Executive, the Scottish Government and the Welsh Government should play in determining the terms of withdrawal and the new post-Brexit UK-EU relationship remains decidedly unclear. Withdrawal from the EU will impact on the nature and substance of devolution, so their voices need to be heard. The 'remain' votes in Scotland and Northern Ireland only make the case for hearing them stronger. Why should they be dragged out of the EU against their wishes? Exactly how their voices will be heard has still to be established.

Also unclear is what form of post-Brexit relationship the UK government will seek. Divisions clearly exist with some UK government ministers arguing for a minimalist free trade-based arrangement – the so-called 'hard' Brexit option – while others argue for a much softer form of Brexit with continued participation in the single market. May's insistence that the UK must 'take back control', particularly of its borders, and limit immigration from the EU means that the 'soft' Brexit seems unlikely.

May is insistent, however, that some form of 'bespoke' arrangement should be sought and can be secured. The UK government is not interested in an 'off the shelf' arrangement, such as participation in the European Economic Area – the so-called 'Norwegian' model. Whether something bespoke is achievable remains to be seen. The repeated and determined insistence of the EU-27 that the four freedoms are an indivisible package does not bode well.

Moreover, the UK government needs to be aware that any agreement that involves more than a free trade agreement will not only have to be agreed unanimously by the EU-27, it will also require domestic ratification in each member state and the consent of the EP. To achieve unanimity will take time. So too will domestic ratification, a process that has its hazards as the stalled process of approval of the Comprehensive Economic Trade Agreement between the EU and Canada has shown. The block

has been the regional parliament of Wallonia. The EU-Ukraine Association Agreement providing for a deep and comprehensive free trade area provides another warning. Its ratification was put to a referendum in the Netherlands and was rejected; the agreement cannot come into force until the Netherlands has completed ratification.

Negotiating a post-Brexit relationship will take time. While the withdrawal negotiations provided for in Article 50 will proceed 'taking account of the framework for the [the UK's] future relationship with the Union', negotiations on the new relationship cannot formally take place until after the UK has left the EU. Precedent suggests that these negotiations will take a number of years, possibly longer. The CETA negotiations took more than five years to complete; the negotiations with Ukraine almost four-and-a-half years.

No doubt the uncertainty around the 'when' and the 'what' of the post-Brexit UK-EU relationship is one reason why the UK government has announced its intention to introduce a 'Great Repeal' bill. It would allow for EU laws to remain in force after withdrawal until such time they are repealed by the UK government. The effect would be to provide some degree of clarity around the legal setting for trade and cooperation with the EU in the interim period between withdrawal and the new relationship.

The outcome of the EU referendum on 23 June is set to bring to an end more than four decades of UK membership of the EU. It will also see for the first time a member state leave the EU. How all this will happen remains decidedly unclear. The referendum result has pushed the UK and the EU into uncharted territory. The UK leaving the EU is the anticipated outcome; how that 'Brexit' is to be achieved and what form that 'Brexit' will take remains to be seen. The same can be said for its effects on the UK and the EU.

The road from the referendum to UK withdrawal and a new post-Brexit relationship with the EU promises to be a long and difficult one. It is one unlikely to be easily travelled. And given its length, who knows what events will intervene.